

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-03

Date issued: February 6, 1991
Requested by: Dr. Wayne G. Sanstead
Superintendent of Public Instruction

- QUESTIONS PRESENTED -

I.

Whether a private school can participate in a statewide telecommunications system built with public funds.

II.

Whether a private school can receive grant funds from the Educational Telecommunications Council to enable it to connect to a statewide telecommunications system.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a private school can participate in a statewide telecommunications system built with public funds.

II.

It is my further opinion that a private school cannot receive grant funds from the Educational Telecommunications Council for any purpose.

- ANALYSES -

I.

North Dakota Century Code (N. D. C. C.) ' 15-65-01 creates the North Dakota Educational Telecommunications Council (hereafter "Council") which is given the responsibility for directing "the creation of educational telecommunication programs and systems within the state." Nothing within the statute limits the usage of any program or system so created. The language of the statute is very broad and inclusive. The powers and duties of the Council, as laid out in N. D. C. C. ' 15-65-03, indicate an expectation that the Council will assist and coordinate with private entities.

The council shall:

1. Direct the implementation of telecommunication systems that are compatible and that can be connected with each other.
2. Develop a comprehensive written plan for the development of telecommunications in this state.
3. Be concerned with the development and use of statewide educational telecommunication programs and systems.
4. Hold coordinating authority for the development of such statewide educational telecommunication programs and systems as may be required to serve the entire state.
5. Assist any organization, state agencies, or both in the preparation, filing, and prosecution before federal agencies such applications, reports, or other documents or requests of any kind that may be necessary or appropriate to achieve the purposes of this chapter.
6. Receive gifts and contributions from public and private sources to be expended to provide educational telecommunication programs and systems.
7. Be concerned with the activation of educational broadcasting channels presently assigned to North Dakota, or the reallocation or addition of the channels, or both, as are determined to be in the best interests of the people of the state.
8. Actively cooperate with the state department of public instruction and the state board of higher education and other agencies and private organizations for the purpose of developing statewide educational telecommunication projects.
9. Adopt bylaws for the conduct of its affairs.
10. Publish the informational material it deems necessary.
11. Carry on a continuing study relating to the needs, resources, and facilities which are available or may be required to establish educational telecommunication programs and systems throughout the entire state.
12. Contract with eligible applicants to build and operate public television stations in this state. Eligible applicants are those licensed by the federal communications commission to operate noncommercial public television stations. Operational contracts shall not exceed the amount raised within the preceding fiscal year by the applicant from nontax sources in this state.

N. D. C. C. ' 15-65-03 (emphasis supplied).

Although the usage of the telecommunications system developed pursuant to N. D. C. C. ch. 15-65 was not addressed in depth in the legislative history, it appears the Legislature envisioned the system being used by other entities as well as by the public schools. "We should keep in mind that telecommunications will embrace a lot more than schools, even though schools are the most important aspect. We are putting the bucks in schools to get this off the ground. This is not just an educational function, however. Other groups will be using the telecommunications system. We will have all kinds of entities using," Hearing on H. B. 1041 Before the House Conference Comm. on Education, 51st ND Leg. (April 4, 1989) (Statement of Rep. Kloubec). Indeed, when N. D. C. C. ch. 15-65 was first enacted in 1969, the legislative history indicates an awareness of the widespread usage anticipated for the systems developed. "Our universities and colleges throughout the state can derive substantial benefit from broadcast television, as can every other segment of society in our state. Indeed this is the crux of HB 385 now before this committee. We must be sure that all segments of our society have easy access to the medium. . . . The proposed legislation will open the way for more rapid development of similar public radio and television stations throughout our state, stations which can then substantially help to increase the quality of education and the quality of life in North Dakota." Hearing on H. B. 385 Before the House Comm. on Education, 41st ND Leg. (February 11, 1969) (Statement of Dr. Kenneth Underwood).

It is my opinion that as long as the private school pays for its share of the cost of its participation, private schools can participate in the statewide educational telecommunication programs and systems developed pursuant to N. D. C. C. ch. 15-65.

II.

N. D. C. C. ch. 15-65 does not reference the awarding of grants by the Council except in section 15-65-05. That section permits the Council to require a school district to provide up to 25% in matching funds to receive any funds appropriated or otherwise available for telecommunications. Pursuant to N. D. C. C. ' 15-47-43, "all school districts in the state of North Dakota, except the Fargo school district, are public school districts" Because the statute gives the Council the authority to limit the grants given to public schools and does not give explicit authority to the Council to give grants to private schools, the Council may not award grants to private schools. See Dickinson Pub. School Dist. No. 1 v. Scott, 252 N. W. 2d 216 (N. D. 1977).

Furthermore, the North Dakota Constitution prohibits using state funds to support sectarian schools. The grants which the Council awards are funded through state money appropriated to the Department of Public Instruction for use by the Council. "No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school." N. D. Const. art. VIII, ' 5. Therefore, none of the money appropriated to the Department of Public Instruction can constitutionally be used to support any sectarian school.

Consequently, it is my opinion that, although private schools may participate in the telecommunications system, private schools may not be given grant funds from these appropriated moneys to aid their participation in the system.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Beth Angus Baumstark

pg